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Carole Migden, Friends of Carole Migden  
Committee, and Re-Elect Senator Carole  
Migden Committee

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CAROLE MIGDEN, et al.,

Plaintiffs,

vs.

CALIFORNIA FAIR POLITICAL PRACTICES  
COMMISSION, et al.,

Defendants.

No.: 2:08-CV-00486-EFB

**DECLARATION OF RICHARD ROSS  
IN SUPPORT OF PLAINTIFFS' MOTION  
FOR PRELIMINARY INJUNCTION**

Hearing:

Date: April 16, 2008

Time: 10:00 a.m.

Ctrm.: 25

(The Honorable Edmund F. Brennan)

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1. I am the President and founder of Ross Communications, a Sacramento-based  
 gy, campaign management and public relations firm. I have worked for three decades in  
 itics, including extensive work with communities and issues in parts of the State  
 is litigation. I have a Masters Degree in Public Administration from San Jose State

2. My knowledge of the area covered by the 3rd Senate District comes from years of running campaigns in the cities, counties and legislative districts in this area. I have worked with local officials and state legislators in the area. I have also worked with the United Farm Workers in the 1970s, first as a community organizer and then as a consultant. I have run issues campaigns, conducted polls, gathered and analyzed demographic data, and met with many individuals and groups. I currently have several clients in the area and continue to keep abreast of issues, trends, and demographics. A true and correct copy of a list of clients for whom I have worked in the San Francisco Bay Area is attached to this declaration as Exhibit A.

3. Senator Carole Migden is one of my clients. I have worked with Senator Migden since 2001, and I have run two of her election campaigns, including her campaigns for Board of Supervisors in 2002 and for State Senate in 2004. I am very familiar with her campaign style and strategy. Currently, I am assisting Senator Migden in her effort to win re-election in the 3rd Senate District. Based on my work in the district in the past, and with Senator Migden in particular, I am very familiar with the district's demographics, its voters, and what it will cost Senator Migden to effectively campaign in the district.

4. The 3rd Senate District has among the highest concentration of registered voters with 455,186 voters, and the highest percentage of absentee voters (49%). Among the districts, approximately 357,739 are eligible to vote in the June Democratic Primary. The district is among the most heterogeneous in California with large numbers of ethnic voters, many of whom cannot be communicated with in different languages, adding additional and unavoidable challenges. For example, there are 55,006 voters who are eligible to participate in the Democratic

1 Primary in the district who are foreign born; 25,348 with Spanish surnames; and 29,293 with Asian  
2 surnames. In addition, the district covers three different counties (San Francisco, Marin and Sonoma),  
3 each with its distinct issues and concerns. To compete in the district therefore, it is critical for a  
4 candidate not only to reach a diverse group of voters, but also to address the different issues and  
5 concerns of voters in each county that is represented within the district.

6           5. Because of the location, geography, and diversity of the district, it is one of the  
7 most expensive districts within which to compete in the State. The district is part of the sixth largest  
8 and most expensive media market in the United States, making communication on broadcast television  
9 almost impossible to afford and therefore increasing the need to use cable television, mail and radio.  
10 Although these means of communication are not as expensive as broadcast television, the costs are still  
11 substantial. For example, sending a single piece of mail would cost approximately \$109,000 and  
12 purchasing a week of radio would cost approximately \$161,500, while cable television ads would cost  
13 approximately \$80,215 per week, excluding production costs which add an additional \$15,000 to  
14 \$25,000 in costs. To make these forms of communications effective, it is necessary to repeat a  
15 candidate's message through multiple mailings and multiple weeks of advertising. For example,  
16 because voters often throw campaign mail away before reading it, it is necessary to send approximately  
17 five pieces of mail to ensure that you have reached the voters. For radio and television, I recommend a  
18 minimum three weeks of ads to maximize the effectiveness of the ads and to ensure that we reach  
19 absentee voters before they vote.

20           6. In addition to the costs of a campaign, timing is also critical. As discussed  
21 above, the district has a high percentage of absentee voters. Because absentee ballots are mailed out  
22 30 days before the election, it is critical to reach these voters early. In order to send mail to absentee  
23 voters, the mail must be produced in April and mailed by the beginning of May. Moreover, because of  
24 the June primary election, printers and mail houses must be booked in advance. To ensure that the  
25 mailers I produce on Senator Migden's behalf can be printed and mailed on time, it is essential that the  
26 campaign contract with these providers by the end of March. In addition, it is essential that any radio  
27 or television advertising begin at least three weeks before the election to ensure that the absentee voters  
28 view the ads and get the messaging before they mail in their ballots. If the campaign media advertising

1 starts any later, we will miss thousands of voters who will have mailed in their ballots before they had  
2 a chance to view the campaign message.

3 7. I am in the process of preparing Senator Migden's campaign plan. Given the  
4 diversity, complexity and cost of campaigning in the district, it is critical that I know now how much  
5 campaign money Senator Migden will have available to spend in April, May and early June. If she can  
6 use her pre-Proposition 34 funds in this election, I will be able to plan for a campaign with a budget of  
7 approximately \$900,000. Currently, Senator Migden has approximately \$150,000 on hand to spend in  
8 the primary election. The additional \$647,000 in Senator Migden's 2004 committee would  
9 dramatically increase her ability to communicate with the voters in her district, which is a critical  
10 element of success. Senator Migden's ability to use the full amount of her campaign funds, including  
11 the contested \$647,000, will have a direct impact on questions such as whether the campaign buys  
12 cable television and radio time and the number of mailers the committee can send.

13 8. For example, with a budget of \$900,000, I likely would recommend one of the  
14 two following plans. One option would be to send five pieces of mail, and I would plan to send that  
15 mail to the voters in two waves – the first mailers would go to the absentee voters beginning May 5,  
16 when the absentee ballot are being sent out; the second wave of mailers would be sent to polling place  
17 voters beginning May 12. In addition to the five pieces of mail, I would recommend a cable television  
18 campaign over two and half weeks, beginning May 13 and ending the weekend before the election on  
19 May 30. The second option I would consider would be to send six mailers and purchase three weeks  
20 of radio ads. Again, the mail would be sent in two waves to absentee voters and polling place voters.  
21 The radio ads would begin airing on May 13.

22 9. Decisions about the allocation of campaign funds must be made soon in order to  
23 ensure that campaign communications can be produced and disseminated in a timely fashion.  
24 Although the mail will be sent in two waves to absentee voters and then polling place voters, all voters  
25 will receive the same mailers. The mailers must be printed at the same time, even though they are  
26 mailed in two parts. Because we plan to send mail to absentee voters, we need to begin printing in  
27 early April. In either option 1 or option 2, described above, I would contract with the stations  
28 beginning in March to ensure that I had sufficient cable and radio time reserved in the critical weeks

1 before the June primary. With a budget of \$900,000, I would have sufficient funds to ensure that I  
2 could change my strategy if necessary in the final few weeks, for instance by sending more targeted  
3 mail to areas. I also would have the funding to conduct polling if necessary to help fashion our  
4 campaign communications to those issues that are of particular interest to the voters in the district.

5 10. If Senator Migden is not able to use her pre-Proposition 34 funds in this  
6 election, it will have a dramatic and irreversible impact on her ability to communicate with voters. The  
7 level of mailings would drop down to one or two mailers, which in my view would be insufficient to  
8 ensure that Senator Migden effectively communicates with all the voters in her district. With this level  
9 of funding, I would not purchase any radio or cable television time because the costs would be  
10 prohibitive, and therefore would be unable to reach many voters during the critical three-week period  
11 preceding the election.

12 11. If I do not know by the end of March whether Senator Migden has access to the  
13 \$647,000 in contested funds, then I will have no choice but to plan a campaign with a much smaller  
14 budget. In that case I will scale back in particular paid media, including mail. This will present the  
15 campaign with a difficult choice: send mail early to reach absentee voters or wait until closer to the  
16 date of the election to reach voters who go to the polls. In either case, it will not be sufficient to  
17 deliver Senator Migden's message to the voters. This would directly and negatively affect Senator  
18 Migden's ability to communicate with all the voters in her large district. Even if I were to find out in  
19 May that Senator Migden can use the funds, it likely would be impossible to gear up quickly enough to  
20 produce and send campaign mail, and to buy sufficient time on radio and cable. Moreover, by then  
21 many absentee voters would have received and returned their ballots, and Senator Migden would have  
22 lost forever the ability to persuade them.

23 I declare under penalty of perjury, under the laws of the State of California, that the  
24 foregoing is true and correct and that this declaration was executed on March 7, 2008 at  
25 SACRAMENTO, California.

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27   
28 RICHARD ROSS

(00053783)

DECLARATION OF RICHARD ROSS IN SUPPORT OF  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

- NO. 2:08-CV-00486-EFB

1 **PROOF OF SERVICE**

2 I, the undersigned, declare under penalty of perjury that:

3 I am a citizen of the United States, over the age of 18, and not a party to the within  
4 cause or action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

5 On March 7, 2008, I served a true copy of the following document(s):

6 **Declaration of Richard Ross in Support of**  
7 **Plaintiffs' Motion for Preliminary Injunction**

8 on the following party(ies) in said action:

9 Scott Hallabrin, General Counsel *Attorneys for Defendants*  
10 Lawrence T. Woodlock,  
Senior Commission Counsel  
Fair Political Practices Commission  
428 "J" Street, Suite 620  
11 Sacramento, CA 95814-2329  
Phone: (916) 322-5660  
12 Fax: (916) 327-2026  
Email: shallabrin@fppc.ca.gov  
13 Email: lwoodlock@fppc.ca.gov

- 14 ☐ **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed  
15 envelope or package addressed to the person(s) at the address above and  
16 ☐ depositing the sealed envelope with the United States Postal Service, with  
the postage fully prepaid.  
17 ☐ Placing the envelope for collection and mailing, following our ordinary  
18 business practices. I am readily familiar with the businesses' practice for  
collecting and processing correspondence for mailing. On the same day  
19 that correspondence is placed for collection and mailing, it is deposited in  
the ordinary course of business with the United States Postal Service,  
20 located in San Leandro, California, in a sealed envelope with postage fully  
prepaid.  
21 ☒ **BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope  
22 or package provided by an overnight delivery carrier and addressed to the persons  
at the addresses listed. I placed the envelope or package for collection and  
23 overnight delivery at an office or a regularly utilized drop box of the overnight  
delivery carrier.  
24 ☐ **BY MESSENGER SERVICE:** By placing the document(s) in an envelope or  
25 package addressed to the persons at the addresses listed and providing them to a  
professional messenger service for service.  
26

1 ☐ **BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons  
2 at the fax numbers listed based on an agreement of the parties to accept service by  
3 fax transmission. No error was reported by the fax machine used. A copy of the  
4 fax transmission is maintained in our files.

5 ☒ **BY EMAIL TRANSMISSION:** By emailing the document(s) to the persons at  
6 the email addresses listed based on a court order or an agreement of the parties to  
7 accept service by email. No electronic message or other indication that the  
8 transmission was unsuccessful was received within a reasonable time after the  
9 transmission.

10 I declare, under penalty of perjury, that the foregoing is true and correct. Executed on  
11 March 7, 2008, in San Leandro, California.

12   
13 Kristen Snider  
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